IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.8.20035

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR
and
THE HONOURABLE MR JUSTICE M.CHOCKALINGAM

Criminal Appeal No. 1052 of 1999

State by Public Prosecutor ... Appellant

Vs

Varghese @ Varghese Anthony ... Respondent/Accused.

Prayer: Appeal preferred by the State against the judgment passed by the learned Principal Sessions Judge, Chengalpattu in S.C.No. 196 of 1996 dated 20.10.97

For Appellant : Mr.V.M.R.Rajendran
Addl. Public Prosecutor.

For Respondents : Mr.K.Ashokan, SC
for Mr. T.S.Srinivasan

J U D G M E N T

(Judgment of the Court was delivered by M.CHOCKALINGAM, J)

Aggrieved by the judgment of the Court of Principal Sessions, Chengalpattu, in Sessions Case No.196 of 1996, wherein A1 the respondent herein, who stood charged for the offences under Sections 341 and 302 read with 34 I.P.C., along with A2, was acquitted, the State has brought forth this appeal. So far as the other accused namely A2, is concerned, the Sessions Case was abated, since he died, pending the proceedings.

2. The short facts necessary for the disposal of this appeal can be stated as follows:-

P.W.1 is the wife of the deceased Narayana Nadar. P.W.5 and P.W.11 are the daughter and son of the deceased respectively. At the time of occurrence, P.W.5 was doing her 10th standard in a School. A1 and the deceased accused used to tease P.W.5 while she was going to school and returning from school. Hence, the deceased reported the same to P.W.6, the

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President of Nadar Association in that area. Apart from that, A1 went to the extent of asking the deceased to give her daughter in marriage. On the date of occurrence, namely 19.1.1995, between 8.00 a.m. and 9.00 a.m., both the accused came to a petty shop run by P.W.1, which was attached to her house, and asked for a cigarette. P.W.1 told them that there was no cigarette. Since, it was not available, the accused scolded P.W.1 with filthy language and left the place. At 7.00 p.m., both the accused again came to the petty shop and asked P.W.1 for a cigarette. When she told that it was not available, they damaged a biscuit bottle which was kept in the shop. Since the accused were often giving troubles, the deceased Narayana Nadar decided to report it to Nadar Association. While Narayana Nadar and his wife were proceeding in a bicycle to meet P.W.6, the President of Nadar Association, they were waylaid by the accused. Both the accused attacked Narayana Nadar with the casuarina sticks. The same was witnessed by P.Ws.1, 3, 11 and others. After attacking Narayana Nadar, both the accused left the place immediately. P.W.1, 2 and 11 took the deceased to the Government Hospital, Chrompet, in a lorry. P.W.12, the Doctor, who was on duty at that time, examined Narayana Nadar and declared him dead at 10.00 p.m. P.W.13, the Sub-Inspector of Police, who was in-charge of Tambaram Police Station, registered a case in crime No.143/95 on the strength of the report, Ex.P1 given by P.W.1. The printed First Information Report, Ex.P.14, was despatched to Court.

3. P.W.13 took up investigation, proceeded to the scene of occurrence, prepared Ex.P.3 the observation mahazar, in the presence of two witnesses and Ex.P.15, the rough sketch and recovered M.O.1, casuarina stick, M.O.2, casuarina stick, M.O.3, Atlas cycle, M.O.5, bloodstained earth and M.O.6, sample earth. Then, he proceeded to the mortuary. He conducted inquest on the dead body of Narayana Nadar in the presence of witnesses and prepared Ex.P.16, the Inquest Report.

4. Pursuant to the requisition given by the Investigating Officer, P.W.8, the doctor attached to the Government Hospital, Chrompet, conducted autopsy on the dead body of Narayana Nadar and found the following injuries.

> "1. Lacerated injury over the left parietal C shaped 5 cms x 1 cm involving the parietal bone.
> 2. Lacerated injury over the right parietal 6 cms x 1 cm x bone deep.
> 3. Lacerated injury over the occipit 4 cms x 1 cm x muscle deep.
> 4. Lacerated injury over the left forehead 3 cms x 1 cm x muscle deep.
> 5. Contusion over abdomen epigastrium 3 cms radius."

The Doctor issued a post-mortem certificate, Ex.P.7 wherein he has opined that the deceased would appear to have died of haemorrhage and shock.

5. Both the accused surrendered before the XIII Metropolitan Magistrate, Egmore, Chennai, and the same came to the knowledge of the

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Investigating Officer. After filing a petition to take the accused into police custody, on the orders of the Court, the accused were taken into police custody. The confessional statements of the accused were recorded and the accused were produced before the Court for remand. All the material objects which were recovered from the place of occurrence and from the dead body, were subjected to chemical analysis, as a result of which Exs.P.10 and P.12, the chemical analyst's report and Ex.P11, the serologist's report were received by the Court. On completion of investigation, the final report was filed. The case was committed to the Court of Sessions and necessary charges were framed. Pending trial, the second accused died.

6. In order to substantiate the charges levelled against the accused, the prosecution marched 13 witnesses, and relied on 18 exhibits and 11 material objects. On completion of the evidence on the side of the prosecution, the respondent/accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. He denied them as false. No defence witnesses were examined, but Ex.D1 was marked. On analysis of the evidence adduced and on consideration of the rival submissions, the trial Court found the respondent/accused not guilty of the charges levelled against him and acquitted him. Hence, this appeal at the instance of the State.

7. Learned counsel appearing for the State interalia made the following submissions.

The lower Court on flimsy grounds had rejected the case of the prosecution. In the instant case, the eye-witnesses have clearly spoken about the act of A1 along with the deceased accused. They have stated that the A1/respondent herein and the deceased accused often used to tease P.W.5 while she was going to school and returning from school. The medical evidence adduced by the prosecution through the Medical Officer who conducted autopsy on the dead body of the deceased Narayana Nadar and the post-mortem certificate issued by him, would corroborate the evidence of the ocular testimony. Added further, the lower court much relied on the Accident Register, Ex.P.13, given by P.W.12. Except that, the lower court had not stated any reason for acquitting the accused. In the instant case, the discrepancies found in the evidence of the eye-witnesses are minor in nature and the lower Court ought not to have placed any reliance upon the same. Hence, the judgement of the lower court has got to be set aside, and the respondent/accused has to be dealt with in accordance with law.

8. The Court heard the learned counsel for the respondent.

9. After careful consideration of the rival submissions made, this court is unable to notice any merit in the appeal. It is pertinent to note that Narayana Nadar, who sustained injuries, was taken to the Government Hospital, Chrompet, where he was declared dead by P.W.12, the Doctor attached to the said hospital. This fact is not questioned by the respondent/accused either before the court below or before this Court. Hence, the prosecution has successfully proved that the deceased died out

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of homicidal violence.

10. In the instant case, the prosecution in order to prove its case had marched number of witnesses. Few of them have spoken that they did not see the occurrence. So far as the other witnesses are concerned, they have stated that they were present at the place of occurrence. It is pertinent to point out that the injured Narayana Nadar was taken to the Government Hospital, where P.W.12, the Doctor medically examined him and declared him dead. The statements given by the witnesses were actually recorded in the Accident Register, Ex.P13. It is not disputed by the prosecution that those witnesses who gave statements to P.W.12, the Doctor were also the eye-witnesses. It is not the case of the prosecution that they came to know about the occurrence but they were witnesses to the occurrence. A perusal of Ex.P.13, Accident Register, would clearly reveal that the relatives of Narayana Nadar took the dead body of Narayana Nadar to the Hospital and informed P.W.12, the Doctor, that they found the dead body in the place of occurrence. This would clearly reveal that these witnesses saw only the dead body of Narayana Nadar and they were not the eye witnesses to the occurrence.

11. In the instant case, according to the prosecution, P.W.1 and other relatives took the dead body in a lorry and on the way to the hospital, P.W.1 got down from the lorry, went to the Police Station and gave a report, as a result of which, the case came to be registered. All the other eye-witnesses, who have clear knowledge, have spoken that they have only seen the dead body in the place of occurrence. But one of the eye-witnesses, namely P.W.1, on going to the police station, speaks about the names of the accused. The earliest document which came into existence is the Accident Register, Ex.P13, which could be made immediately after the occurrence. So far as the F.I.R. is concerned, the lower Court has clearly pointed out that the motive so alleged is flimsy. Apart from that, the F.I.R. could not have come into existence as putforth by the prosecution. It is not the case where the prosecution rests its case on the circumstantial evidence but on the direct evidence through the eye-witnesses. There are ample materials to indicate that the eye-witnesses who were examined by the prosecution, could not have seen the occurrence at all. The lower Court was perfectly correct in rejecting the case of the prosecution in its entirety. It has to be pointed out that it is the preposition of law that once the trial court, on evidence, has acquitted the accused, unless there are compelling circumstances, the Appellate Court should not interfere with the findings of the lower Court. Under such circumstances, this Court is of the considered opinion that it is not a fit case to interfere with the findings of the lower Court.

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12. In the result, the judgement of the lower Court is confirmed. Accordingly, the appeal is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vsi

To
1.The Principal Sessions Judge, Chengalpattu.
2.The District Collector, Chengalpattu M.G.R. District
at Kancheepuram.
3.The Inspector of Police, Tambaram Police Station.
4.The Public Prosecutor, High Court, Madras.
5. The Judicial Magistrate, Tambaram.
6. -do- through the Chief Judicial Magistrate, Chengalpattu.

+ 1 CC to Mr. T.S.Srinivasan, Advocate SR NO 34391

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